

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

FILED  
BILLINGS DIV.  
2011 SEP 16 AM 10 05  
PATRICK E. DUFFY, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**VICTOR DeMAIO and**  
**DON TANGWELL,**

**Plaintiffs,**

**vs.**

**WOODROW WEITZEIL,**  
**KENT SIPE, SHAWN LESNIK,**  
**DONNA MARSH, RANDAL**  
**SPAULDING, BONNIE DeMAIO,**  
**individually, jointly, and severally,**

**Defendants.**

**CV-11-56-BLG-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

On July 7, 2011, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends Weitzel's, Lesnik's, and Marsh's motion to dismiss be granted; B. DeMaio's motion to dismiss be granted; Spaulding's motion for summary judgment be granted; and Sipe's motion for summary judgment be granted.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no

party filed objections to the July 7, 2011 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After the filing of the Complaint in this matter, Plaintiffs have done nothing to pursue their action. All of the Defendants filed motions to dismiss or motions for summary judgment and Plaintiffs failed to respond. When a party opposing a motion fails to file a response, as here, the Court has discretion to deem the failure "an admission that the motion is well-taken." *Local Rule 7.1(d)(1)(B)*. By bringing this action, Plaintiffs have assumed an affirmative responsibility to participate in accordance with the rules. Their failure to do so imposes a strain on judicial resources and, more significantly, works unfair prejudice upon Defendants compelled to appear to defend themselves.

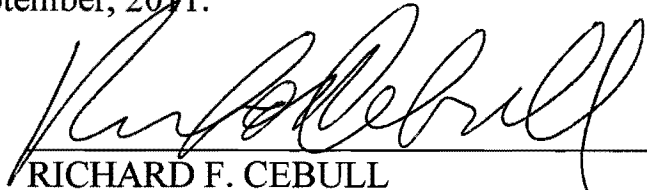
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. Weitzel's, Lesnik's and Marsh's Motion to Dismiss [*Doc. 7*] is **GRANTED.**
2. B. DeMaio's Motion to Dismiss [*Doc. 11*] is **GRANTED.**
3. Spaulding's Motion for Summary Judgment [*Doc. 14*] is **GRANTED.**
4. Sipe's Motion for Summary Judgment [*Doc. 18*] is **GRANTED.**

The Clerk of Court shall notify the parties of the entry of this Order, enter Judgment and close this ~~matter~~<sup>the</sup>.

DATED the 16<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE